

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1732-WQ-E TCEQ ID: RN102564333 CASE NO.: 34857
RESPONDENT NAME: American Plant Food Corporation

Page 1 of 2

| | | |
|---|---|---|
| ORDER TYPE: | | |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input checked="" type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: American Plant Food Wortham, at the intersection of First Street and Colorado Street, Wortham, Freestone County</p> <p>TYPE OF OPERATION: Fertilizer mixing facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Complaints were received August 2 and 16, 2007, alleging that the Respondent was allowing water with an ammonia odor to run off the property into a storm drain and into the street. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 5, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2134; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Jerry Newcomb, Division Manager, American Plant Food Corporation, P.O. Box 584, Galena Park, Texas 77547 Mr. Donald R. Ford, President, American Plant Food Corporation, P.O. Box 584, Galena Park, Texas 77547 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|--|
| <p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: August 2 and 16, 2007</p> <p>Date of Investigation Relating to this Case: August 31, 2007</p> <p>Date of NOV/NOE Relating to this Case: October 10, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failed to obtain authorization to discharge storm water associated with industrial activities [30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FEDERAL REGULATIONS § 122.21(c)].</p> <p>2) Failed to prevent an unauthorized discharge of fertilizer and storm water that had come into contact with bulk agricultural chemicals [TEX. WATER CODE § 26.121(a)].</p> | <p>Total Assessed: \$3,150</p> <p>Total Deferred: \$630 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,520</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the Multi-Sector Industrial General Permit requirements;</p> <p>b. Within 30 days after the effective date of this Agreed Order, implement measures to prevent any future unauthorized storm water discharges; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provisions a. and b.</p> |

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 15-Oct-2007 | Screening | 23-Oct-2007 | EPA Due | |
| | PCW | 1-Nov-2007 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|-----------------------------|---------------------------------|---------------------------|-------|
| Respondent | American Plant Food Corporation | | |
| Reg. Ent. Ref. No. | RN102564333 | | |
| Facility/Site Region | 9-Waco | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|--|----------------|--------------------------|--------------------|
| Enf./Case ID No. | 34857 | No. of Violations | 2 |
| Docket No. | 2007-1732-WQ-E | Order Type | 1660 |
| Media Program(s) | Air | Enf. Coordinator | Suzanne Walrath |
| Multi-Media | | EC's Team | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement **Subtotals 2, 3, & 7** \$150

Notes The Respondent received one NOV for same or similar violations.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$444 **0% Enhancement*** **Subtotal 6** \$0
Approx. Cost of Compliance \$10,000 **Capped at the Total EB \$ Amount*

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$3,150

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$3,150

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$3,150

DEFERRAL 20% Reduction **Adjustment** -\$630

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral recommended for expedited settlement.

PAYABLE PENALTY \$2,520

Screening Date 23-Oct-2007

Docket No. 2007-1732-WQ-E

PCW

Respondent American Plant Food Corporation

Policy Revision 2 (September 2002)

Case ID No. 34857

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN102564333

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 1 | 5% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent received one NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

| | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---------------------------------------|--|-------------|----------|-------|----------------------|----------------------|----------------------|----------------------|--------|----------------------|----------------------|----------------------|---|----------------------|----------------------|----------------------|--|
| Screening Date 23-Oct-2007 | | Docket No. 2007-1732-WQ-E | | PCW | | | | | | | | | | | | | | | | | |
| Respondent American Plant Food Corporation | | <small>Policy Revision 2 (September 2002)</small> | | | | | | | | | | | | | | | | | | | |
| Case ID No. 34857 | | <small>PCW Revision September 19, 2007</small> | | | | | | | | | | | | | | | | | | | |
| Reg. Ent. Reference No. RN102564333 | | | | | | | | | | | | | | | | | | | | | |
| Media [Statute] Air | | | | | | | | | | | | | | | | | | | | | |
| Enf. Coordinator Suzanne Walrath | | | | | | | | | | | | | | | | | | | | | |
| Violation Number | | <input type="text" value="1"/> | | | | | | | | | | | | | | | | | | | |
| Rule Cite(s) | | <input type="text" value="30 Tex. Admin. Code § 281.25(a)(4), and 40 Code of Federal Regulations § 122.21(c)"/> | | | | | | | | | | | | | | | | | | | |
| Violation Description | | <input type="text" value="Failed to obtain authorization to discharge storm water associated with industrial activities."/> | | | | | | | | | | | | | | | | | | | |
| Base Penalty | | | | <input type="text" value="\$10,000"/> | | | | | | | | | | | | | | | | | |
| >> Environmental, Property and Human Health Matrix | | | | | | | | | | | | | | | | | | | | | |
| OR | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> | | | | | Harm | | | Release | Major | Moderate | Minor | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | Percent <input type="text" value="0%"/> |
| | | Harm | | | | | | | | | | | | | | | | | | | |
| | Release | Major | Moderate | Minor | | | | | | | | | | | | | | | | | |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | | | | | | | | | | | | | | | | | | |
| Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| >> Programmatic Matrix | | | | | | | | | | | | | | | | | | | | | |
| OR | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> | | | | | Major | Moderate | Minor | Falsification | <input type="text"/> | <input type="text"/> | <input type="text"/> | | x | <input type="text"/> | <input type="text"/> | Percent <input type="text" value="10%"/> | | | | |
| | | Major | Moderate | Minor | | | | | | | | | | | | | | | | | |
| | Falsification | <input type="text"/> | <input type="text"/> | <input type="text"/> | | | | | | | | | | | | | | | | | |
| | x | <input type="text"/> | <input type="text"/> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| Matrix Notes | | <input type="text" value="100% of the rule requirement was not met."/> | | | | | | | | | | | | | | | | | | | |
| Adjustment | | | | <input type="text" value="\$9,000"/> | | | | | | | | | | | | | | | | | |
| | | | | <input type="text" value="\$1,000"/> | | | | | | | | | | | | | | | | | |
| Violation Events | | | | | | | | | | | | | | | | | | | | | |
| Number of Violation Events | | <input type="text" value="2"/> | Number of violation days <input type="text" value="53"/> | | | | | | | | | | | | | | | | | | |
| <small>mark only one with an x</small> | daily | <input type="text"/> | Violation Base Penalty <input type="text" value="\$2,000"/> | | | | | | | | | | | | | | | | | | |
| | monthly | <input type="text" value="x"/> | | | | | | | | | | | | | | | | | | | |
| | quarterly | <input type="text"/> | | | | | | | | | | | | | | | | | | | |
| | semiannual | <input type="text"/> | | | | | | | | | | | | | | | | | | | |
| | annual | <input type="text"/> | | | | | | | | | | | | | | | | | | | |
| single event | | <input type="text"/> | | | | | | | | | | | | | | | | | | | |
| <input type="text" value="Two monthly events are recommended beginning on the investigation date (August 31, 2007) until case screening date (October 23, 2007)."/> | | | | | | | | | | | | | | | | | | | | | |
| Economic Benefit (EB) for this violation | | | Statutory Limit Test | | | | | | | | | | | | | | | | | | |
| Estimated EB Amount | | <input type="text" value="\$92"/> | Violation Final Penalty Total <input type="text" value="\$2,100"/> | | | | | | | | | | | | | | | | | | |
| | | | This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,100"/> | | | | | | | | | | | | | | | | | | |

Economic Benefit Worksheet

Respondent American Plant Food Corporation
Case ID No. 34857
Reg. Ent. Reference No. RN102564333
Media Air
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost No commas or \$ | Date Required | Final Date | Yrs. | Interest Saved | Onetime Costs | EB Amount |
|------------------|------------------------------|---------------|------------|------|----------------|---------------|-----------|
|------------------|------------------------------|---------------|------------|------|----------------|---------------|-----------|

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|-----|------|-----|------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | \$2,500 | 31-Aug-2007 | 27-May-2008 | 0.7 | \$92 | n/a | \$92 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

This is the estimated cost to obtain a Multi-Sector Industrial General Permit, beginning on the date of the investigation, and ending on the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$92

Screening Date 23-Oct-2007

Docket No. 2007-1732-WQ-E

PCW

Respondent American Plant Food Corporation

Policy Revision 2 (September 2002)

Case ID No. 34857

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN102564333

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)

Violation Description Failed to prevent an unauthorized discharge of fertilizer and storm water that had come into contact with bulk agricultural chemicals.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | X |
| Potential | | | |

Percent 10%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

53 Number of violation days

| | | |
|----------------------------|--------------|---|
| mark only one with an x | daily | |
| | monthly | |
| | quarterly | X |
| | semiannual | |
| | annual | |
| | single event | |

Violation Base Penalty \$1,000

One quarterly event is recommended beginning on the investigation date (August 31, 2007) until case screening date (October 23, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$351

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent American Plant Food Corporation

Case ID No. 34857

Reg. Ent. Reference No. RN102564333

Media Air

Violation No. 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|-----|------|-------|-------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | \$5,000 | 31-Aug-2007 | 27-May-2008 | 0.7 | \$12 | \$247 | \$259 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$2,500 | 31-Aug-2007 | 27-May-2008 | 0.7 | \$92 | n/a | \$92 |

Notes for DELAYED costs

These are estimated costs for additional oversight and supervision, and to develop and implement modifications to prevent any future unauthorized storm water discharges, beginning on the date of the investigation, and ending on the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$7,500

TOTAL

\$351

Compliance History

| | | | | |
|---|--|---------------------------------|-------------------------|---------------------|
| Customer/Respondent/Owner-Operator: | CN600411698 | American Plant Food Corporation | Classification: AVERAGE | Rating: 2.81 |
| Regulated Entity: | RN102564333 | AMERICAN PLANT FOOD WORTHAM | Classification: AVERAGE | Site Rating: 3.00 |
| ID Number(s): | AIR NEW SOURCE PERMITS | PERMIT | 765 | |
| | AIR NEW SOURCE PERMITS | ACCOUNT NUMBER | FI0001D | |
| Location: | Intersection of First Street and Colorado Street, Wortham, Freestone County | | Rating Date: 9/1/2007 | Repeat Violator: NO |
| TCEQ Region: | REGION 09 - WACO | | | |
| Date Compliance History Prepared: | October 23, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | October 23, 2002 to October 23, 2007 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Suzanne Walrath | | Phone: | 512/239-2134 |

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 02/12/2004 (261625)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | | |
|--------------|--|----------|--------------------------|
| Date: | 05/05/2004 | (270788) | |
| Self Report? | NO | | Classification: Major |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4) | | |
| Description: | Failure to obtain coverage under the Multi-Sector General Permit (MSGP) for industrial storm water | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 2D TWC Chapter 26, SubChapter A 26.121(a) | | |
| Description: | Failure to prevent the unauthorized discharge of fertilizer and storm water that has come in contact with bulk agricultural chemicals into or adjacent to waters of the state. | | |
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AMERICAN PLANT FOOD
CORPORATION
RN102564333

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-1732-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding American Plant Food Corporation ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, appear before the Commission and together stipulate that:

1. The Respondent owns and operates a fertilizer mixing facility at the intersection of First Street and Colorado Street in Wortham, Freestone County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 15, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand One Hundred Fifty Dollars (\$3,150) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Five Hundred Twenty Dollars (\$2,520)

of the administrative penalty and Six Hundred Thirty Dollars (\$630) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to obtain authorization to discharge storm water associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FEDERAL REGULATIONS § 122.21(c), as documented during an investigation conducted on August 31, 2007.
2. Failed to prevent an unauthorized discharge of fertilizer and storm water that had come into contact with bulk agricultural chemicals, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on August 31, 2007.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: American Plant Food Corporation, Docket No. 2007-1732-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the Multi-Sector Industrial General Permit requirements, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) to:

Texas Commission on Environmental Quality
Wastewater Permitting Section, MC 148
P. O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order, implement measures to prevent any future unauthorized storm water discharges; and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:


Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4/21/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

2-20-08
Date

Donald R. Ford

Name (Printed or typed)
Authorized Representative of
American Plant Food Corporation

President

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

10-10-10

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